IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revn. No. 97 of 1996

Date of decision:15.10.2007

Mastan Singh ... Petitioner

Versus

State of Punjab ... Respondent

Coram: Hon'ble Mr. Justice Harbans Lal

Present: Mr.R.N.Moudgil, Advocate for the petitioner.

Mr. A.S.Brar, Deputy Advocate General, Punjab

Harbans Lal, J.

This criminal revision is directed against the judgment dated 26.2.1994 rendered by the Court of Shri Nirmal Singh, Judicial Magistrate Ist Class, Kharar, whereby he convicted and sentenced the revision petitioner to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- or in default thereof, to further undergo simple imprisonment for three months, as well as the judgment dated 14.2.1996 passed by the Court of Additional Sessions Judge, Rupnagar, vide which he upheld the above mentioned conviction as well as sentence and dismissed the appeal.

The facts in brief of the prosecution case are that on 25.2.1992, the police party headed by Assistant Sub Inspector Jagtar Singh was present in the area of village Raipur Khurd in connection with the patrol duty. Hargobind Singh complainant made a statement to Jagtar Singh Asstt. Sub Insepector. He stated that he was resident of village Chaomajra, Police Station Sohana and was agriculturist by profession. He was also Sapanch of the village. On 23.2.1992 at about 6.30 P.M. he was present in his house. He heard noise and went out. He found that there was noise in front of the house of Gulzar Singh Lamberdar. As a Sarpanch when he went there, he found Mastan Singh, Amrik Singh and Mohinder Singh sons of Pritam Singh and Ranjit Singh alias Billa son of Mohinder Singh Jat, residents of village Chaomajra. They were abusing Gulzar Singh. He told the accused persons that Gulzar Singh was alone and they should not abuse him. Mastan Singh who was armed with Gandasi said that first of all they should see Hargobind Singh and they would see Gulzar Singh lateron. Mastan Singh gave a gandasi blow which hit him on his head. Amrik Singh, hurled a Takua blow on him, but he retraced the steps and, as a result, saved him. He ran back to his house and bolted the door. The accused who were standing outside continued abusing and threatening him to kill. After hearing noise, his brother Harbhajan Singh and Gurmel Singh came to the spot. They made the accused to understand and sent them to their houses. The accused also abused and threatened Gulzar Singh. The motive for committing the crime was that Mastan Singh was an Ex-Sarpanch of the village. A

sum of more than Rs.16,000/- was due from him. The B.D.O. issued a notice to Mastan Singh to deposit the amount. Mastan Singh had a suspicion that it was the complainant who got the notice issued from the B.D.O. The complainant was removed to Civil Hospital, Phase-VI, Mohali and was got admitted there. After giving first aid to the complainant, he was referred to General Hospital, Sector 16, Chandigarh, where he remained admitted till 24.2.1992. From the hospital he directly went to his house. After taking his brother with him then he lodged the report with the police. On the basis of his statement a case under Section 324/34 IPC was registered. The accused were arrested. After investigation accused Mastan singh and others were challaned in this case.

Mr. R.N.Moudgil, Advocate appearing on behalf of the revisionist has urged with great eloquence that the alleged occurrence took place on 23.2.1992 around 6.30 P.M. but the report with the police was lodged on 25.2.1992, obviously with the delay of more than 40 hours, which has not been explained by the prosecution. He further pressed into service that the defence of the revisionist is that the injuries on his person and on that of Amrik Singh have not been explained by the prosecution and the same have been brushed aside by the Courts below with the simple observations that the prosecution is required to explain only serious injuries and not others.

To overcome these submissions, Mr. A.S.Brar, Deputy Advocate General, Punjab contended that the alleged delay pales into

insignificance in view of the fact that the presence of the accused at the time of occurrence has been admitted. He further canvassed at the bar that the courts below have rightly observed that the injuries on the person of the revisionist or Amrik Singh were not required to be explained.

I have given a deep and thoughtful consideration to the rival contentions. At this juncture, Mr. Moudgil, Advocate appearing on behalf of the revisionist made a misericordious submission for releasing the revisionist on probation of good conduct.

As transpires from the testimony of Dr. R.S. Mann (DW-2), examined by the revisionist as well as his co-accused, injuries were also found on their person. Mr. Moudgil submitted that the above mentioned revisionist as well as Amrik Singh had sustained injuries during the occurrence. Thus, suffice to say that the presence of the revisionist at the time of occurrence has been admitted. Sequelly the alleged delay in lodging the FIR loses its significance. The injuries being of minor nature were not required to be explained by the prosecution.

As would be apparent from the judgment of the trial Court Amrik Singh, Mohinder Singh and Ranjit Singh alias Billa were acquitted of the charge under Sections 324/34 of the Indian Penal Code. The occurrence took place way-back in 1992 and since then the revisionist has been undergoing the ordeal of the prosecution. He was 45 years of age at the time of his conviction by

the learned trial Court. He might be more than 58 years of age by now. The period exceeding 15 years has elapsed since the registration of the case.

In re: **Balbir Singh vs. State of Haryana** 2006 (2) Recent Criminal Reports (Criminal) 109 (P&H), the occurrence had taken place about 14 years back. In that case, Balbir Singh appellant had also injuries on his person and one was on his head and his co-accused were acquitted. Appellant Balbir Singh was convicted for the offence under Section 325 of the Indian Penal Code. This Court was pleased to release the appellant Balbir Singh on probation of good conduct.

Further in re: **Mahanda vs. State of Punjab** 2007(4) Recent Criminal Report (Criminal) 175, the appellant was convicted and sentenced under Sections 332 and 323 of the Indian Penal Code. He was also ordered to be released on probation of good conduct by this Court.

To my mind the observations made in re: **Balbir Singh's** case (supra) have a direct bearing on the merits of case. Consequently, without sojourning any longer on this short point and by taking into consideration, the entirety of the facts and circumstances of the case, I deem it a fit case where benefit of Probation of Offenders Act, 1958 ought to be given to the revisionist Mastan Singh who is directed to be released on probation for a period of one year under Section 4(1) of the Probation of Offenders Act, 1958 on his furnishing personal

bond in the sum of Rs.3000/- with one surety in the like amount to the satisfaction of the trial Court (successor Court of Shri Nirmal Singh, Judicial Magistrate Ist Class, Kharar). The bonds shall be furnished within a period of two months from today. During his probation period, he shall keep peace and be of good behaviour and in case of any default, he will be sent back in custody to receive the sentence as awarded by the learned Trial Court.

As follows from the judgment of the learned trial Court and noticed at the outset, a sum of Rs.1,000/- was imposed upon the revision petitioner as fine. The same shall be converted to prosecution cost by the learned trial Court and the amount of Rs.2,000/- as remaining amount of prosecution costs, shall be deposited with the trial Court.

The petition stands disposed of with the above said modification.

(HARBANS LAL)

JUDGE

October 15, 2007

gsv/RS